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ORDER 2001-10-6

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**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 17th day of October, 2001.

45-day notice filed by

**UNITED AIR LINES, INC.
and
AIR WISCONSIN AIRLINES CORPORATION**

Of intent to suspend service at Tri-Cities,
Tennessee/Virginia under 49 U.S.C. § 41717(g)

Docket OST-2001-10679 — 7

Served: October 17, 2001

ORDER ALLOWING EARLY SUSPENSION OF SERVICE

Summary

By this order we are allowing Air Wisconsin Airlines Corporation to suspend its Tri-Cities-O'Hare service, effective October 21, 2001.

Background

Section 41717(g) of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, P.L. 106-181 (AIR-21) imposed a residual service obligation on carriers that received O'Hare slot exemptions prior to the passage of AIR-21. Generally, a carrier providing service between a small hub or nonhub airport and O'Hare on or before April 5, 2000, as a result of having been granted O'Hare slot exemptions may not suspend that service unless it first files notice under 49 U.S.C § 41719 and the Department determines that the carrier suffered excessive losses, including substantial losses on operations on that route during the calendar quarters immediately preceding submission of the notice. Section 41719 requires the carrier to provide at least 45-days' notice of intent to terminate, but allows for a number of exceptions permitting termination with lesser notice.

On September 21, 2001, United Air Lines and Air Wisconsin Airlines Corporation filed a 45-day notice of intent to suspend scheduled provided by Air Wisconsin between Chicago O'Hare International Airport and Tri-Cities, Tennessee/Virginia¹ effective September 29, 2001.² The notice was filed pursuant to 49 U.S.C § 41717(g). The joint applicants also effectively request that the Department find that an exception applies under 49 U.S.C § 41719(b)(1) or in the alternative, grant an exemption under § 40109 from the 45-day notice requirement in order to allow them to terminate service prior to the expiration of the 45-day period.

Air Wisconsin operates a single daily round trip as United Express between O'Hare and Tri-Cities using Dornier 328 aircraft, but prior to September 11, the carrier had operated three daily round trips. By Order 2000-1-3, issued January 4, 2000, the Department granted six slot exemptions to Air Wisconsin to provide nonstop service between O'Hare and Tri-Cities. The joint applicants state that only one of the six flights a day (three round trips) operated by Air Wisconsin prior to September 11 was using a slot exemption granted by Order 2000-1-3. The remaining O'Hare-Tri-Cities services operated by Air Wisconsin before September 11 were outside the slot-controlled hours.³

The joint applicants further state that under § 41719(b)(1) the Department may grant an exception from the 45-day notice requirement if "the carrier involved is experiencing a sudden or unforeseen financial emergency." The joint applicants argue that the crisis resulting from the September 11 events is such a situation as contemplated by the statute. The joint applicants state that they operate the O'Hare-Tri-Cities service under a fee-for-departure arrangement whereby United assumed the revenue risk and paid a fee per departure to Air Wisconsin. The joint applicants argue that under these circumstances, the losses experienced by United rather than Air Wisconsin are the appropriate measure for carrier losses under § 41717(g)(2). The joint applicants contend that United's system losses for the year ended June 30, 2001, were \$597 million, or a net loss of 6.1 percent of operating expenses. They assert that this relative level of loss was found to be excessive by the Department in Order 2001-8-12 where the Department allowed the suspension of O'Hare-Dubuque, IA, service by Great Lakes Aviation Ltd. under the same statute at issue here. The joint applicants also state that United suffered losses of \$539,000 on revenues of \$3,071,000 on the Chicago-Tri-Cities sector for the period January-July 2001.

¹ The Tri-Cities constitute Kingsport, Johnson City and Bristol, Tennessee, and Bristol, Virginia, and are served by the Tri-Cities Airport. The Tri-Cities Airport is classified as a nonhub by the Department of Transportation's *Airport Activity Statistics of Certificated Route Air Carriers*, since it accounts for less than .05 percent of all U.S. enplanements. By Order 2000-4-14, issued April 14, 2000, and pursuant to AIR-21, the Department granted blanket slot exemption authority to U.S. air carriers seeking to provide service between small hubs and nonhubs and O'Hare with aircraft of less than 71 seats.

² On October 1, 2001, the joint applicants filed a supplement indicating that they were modifying their requested effective date of service suspension from September 29 to October 5. The joint applicants also indicated that Air Wisconsin has reduced its Tri-Cities-O'Hare service from three daily round trips to one daily round trip.

³ Section 41715(a)(1) of AIR-21 eliminated the High Density Rule at O'Hare, effective July 1, 2002, and in the meantime, effective July 1, 2001, Section 41717(a) narrowed the window of slot controlled hours to between 2:45 p.m. and 8:14 p.m.

The joint applicants argue that the recent tragic events at New York and Washington have forced them to file the termination notice and request relief from the 45-day notice requirement or an exemption under § 40109. They contend that air carriers must take immediate and drastic steps to ensure their continued survival. In particular they state that United has laid off 20,000 employees as an emergency step to deal with the current situation. The joint applicants argue that they must also eliminate the O'Hare-Tri-Cities service as a crisis management measure.

The joint applicants also argue that Tri-Cities would not be substantially disadvantaged by the proposed suspension of service since the community would continue to receive daily services to Atlanta, Charlotte, Cincinnati, Pittsburgh and Memphis. They assert that under these circumstances, Tri-Cities passengers would have multiple convenient online services to O'Hare.

The joint applicants also state that they would comply with any reasonable conditions imposed by the Department in conjunction with the proposed termination of service such as notification and assistance of passengers holding reservations on suspended flights.

On September 25, 2001, the Tri-Cities Airport Commission filed an answer in opposition to the joint application, but upon reconsideration, Tri-Cities subsequently withdrew its answer provided that Air Wisconsin maintain its current single daily O'Hare-Tri-Cities round trip through October 20, 2001. The joint applicants have agreed to maintain service through October 20.

Decision

We have decided to grant the joint applicants' request to suspend service. By this action, we require Air Wisconsin to maintain its current single daily round trip in nonstop service between Tri-Cities and O'Hare through and including October 20, 2001. Air Wisconsin may suspend this service effective October 21, 2001.

As a result of the terrorist attacks of September 11, 2001, President Bush signed the Stabilization Act into law on September 22, 2001, in part to deal with the crisis facing the U.S. air transportation system. As indicated in testimony leading up to this legislation and a study by the General Accounting Office (GAO), many air carriers have suffered precipitous losses in traffic and revenue as a result of the September 11 events.⁴ Prior to September 11, United had been experiencing system losses of \$597 million for the year ended June 30, 2001. Additionally, it has reported losses on the O'Hare-Tri-Cities route

⁴ General Accounting Office, Memorandum to Congressional Requesters dated October 15, 2001, Subject: Financial Management: Assessment of the Airline Industry's Estimated Losses Arising From the Events of September 11, (GAO-02-133R). The GAO stated at page 2 "...that there is a reasonable basis to assume that the airline industry will incur losses resulting from the terrorist attacks of at least \$5 billion and possibly more through December 31, 2001." Further, "[o]ur high level analysis, [footnote omitted] using various revenue and cost savings assumptions, indicates possible losses in the range of \$6.5 billion to \$10.5 billion."

that are substantial. The events of September 11 increased these losses and under these circumstances, we find that United's losses may be deemed excessive and substantial. United and Air Wisconsin thereby have satisfied the requirements of section 41717(g) and may terminate service on the route. We also find that the financial losses sustained by United/Air Wisconsin directly attributable to the terrorist attacks of September 11 meet the requirements for an exception to the 45-day notice standard, as a "sudden and unforeseen financial emergency" under section 41719(b)(1). We regret that this finding will result in the loss of Tri-Cities nonstop service to O'Hare but, as the joint applicants note, grant of the requested relief will still leave Tri-Cities with substantial access to the national air transportation system with service to Atlanta, Charlotte, Cincinnati, Pittsburgh and Memphis. These hubs will also provide reasonable connecting service to O'Hare.

In the longer term the Tri-Cities-O'Hare market has shown itself capable of sustaining nonstop O'Hare service. Moreover, when the time is propitious, interested air carriers will find that barriers to entering this market would be minimal. As noted earlier, O'Hare slot-controlled hours were narrowed significantly on July 1, 2001, and effective July 1, 2002, the High Density Rule at O'Hare will be eliminated. Under these conditions, we would expect that Tri-Cities-O'Hare service would become an attractive opportunity when air transportation service re-stabilizes.

Before Air Wisconsin suspends service, we expect it to contact all passengers who hold reservations for flights that will be suspended, to inform them of the suspension and the availability of other service at Tri-Cities and to assist them in arranging alternate transportation.

This Order is issued under authority delegated in 49 CFR 1.56(a).

ACCORDINGLY,

1. We allow Air Wisconsin to suspend its scheduled air service between Chicago, IL (O'Hare International Airport) and Tri-Cities, Tennessee/Virginia effective October 21, 2001; and

2. We will serve copies of this order on the mayors of Kingsport, Johnson City and Bristol, Tennessee, and Bristol, Virginia, the Tri-Cities Airport Commission, United Air Lines, Inc., and Air Wisconsin Airlines Corporation.

By:

READ C. VAN de WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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